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Robert Anderson
Administrator

Date: April 6, 2010

Name of Appellant: Paino Associates c/o Ralph
Gilbert

Service Address: Walter Adams, WBA Associates
36 River Ridge
Wellesley, MA. 02481

In reference to: Home Suites Inn Hotel
455 Totten Pond Road
Waltham, MA. 02451

Docket Number: 10-833

Property Address: Home Suites Inn Hotel
455 Totten Pond Road
Waltham, MA. 02451

Date of Hearing: 01-19-10

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

BUILDING CODE APPEALS BOARD


Patricia Barry, Clerk

cc: Building Code Appeals Board
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 10-833

Walter Adams,)
Appellant,)
)
v.)
)
City of Waltham,)
Appellees)
)

**MEMORANDUM OF DECISION AND ORDER ON APPELLANT'S
REQUEST FOR FURTHER REVIEW**

PROCEDURAL HISTORY

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board overturn the local building commissioner's determination that the occupancy use for the property at 455 Totten Pond Road, Waltham, MA had changed, and if necessary, requested that the Board grant a variance from 7th edition 780 CMR 310.1. In accordance with GL c. 30A, §§10 & 11; GL c. 143, §100; 801 CMR 1.02 *et. seq.*; and 780 CMR 122.3.4, the Board convened a public hearing on January 19, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Appearing on behalf Appellant was Walter Adams, Bud Shadrawy, Keith Gilbert, and Darrell Lemar. Appearing on behalf of the Appellee was Ralph Gaudet, Brian Bower, Clifford Richardson, and Luke Stanton.

DISCUSSION

The issue before the Board is whether the property in question should be classified as an R-1 or R-2 occupancy under 780 CMR 310.1. Additionally at issue, is whether, if the Board

affirms the Appellee's classification of the property as an R-2 occupancy, then should a variance be granted permitting an R-1 occupancy. 780 CMR 310.1 defines an R-1 residential occupancy as one "where the occupants are *primarily transient* in nature, including:...(b) Hotels (transient)". Further, 780 CMR 310.1 defines an R-2 occupancy as one "containing sleeping units of more than two dwelling units where the occupants are *primarily permanent* in nature, including:...(h) Hotels (nontransient)". The property in question is a Home Suites Inn hotel, which is owned by the appellant.

The Board found that the property should be classified as an R-2 occupancy. It reasoned that the property is nontransient in nature because a substantial amount of the accommodated guests were homeless families covered under the state's Community Service Network program and were staying for extended periods of time. *Cf.* Building Code Appeals Board docket #10-834. The Board, however, concluded that classifying the property under an R-2 occupancy would result in said families being left homeless until the building could come in to compliance with the Building Code. Thus, at hearing, a motion was made to grant the variance to 780 CMR 310.1, on condition that the recently installed sprinkler system is inspected as soon as possible. There was a second on the motion and the Board vote was taken, which was unanimous.

ORDER

For the forgoing reasons, the Appellant's request for a variance from 780 CMR 310.1 is hereby **GRANTED**, by a vote of 3-0, permitting the Appellant to maintain the property as an R-1 occupancy.



DOUGLAS SEMPLE



ALEXANDER MACLEOD



WILLIAM MIDDLEMISS

DATED: February 12, 2010

In accordance with M.G.L. c. 30A, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after receipt of this decision.